

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMES K. KORNHARDT,)
)
)
Movant,)
)
)
v.) No. 4:16-CV-1558 CAS
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent,)

MEMORANDUM AND ORDER

This matter is before the Court on the motion of James Kornhardt to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. The motion is denied.

Movant was convicted of conspiracy to commit murder for hire and murder for hire. United States v. Kornhardt, No. 4:08-CR-701 CAS. The Court sentenced him to life imprisonment. The sentence was affirmed on appeal.

Movant filed his first § 2255 motion in January 2013. Kornhardt v. United States, No. 4:13-CV-214 CAS. The Court denied the motion, and subsequently denied movant's motion for certificate of appealability. Movant has appealed the Court's ruling, and movant's appeal is pending before the Eighth Circuit Court of Appeals. Kornhardt v. United States, No. 16-3371 (8th Cir. filed Aug. 16, 2016).

In this case, movant seeks relief under Rosemond v. United States, 134 S. Ct. 1240 (2014), which he believes applies retroactively on collateral review.

Under 28 U.S.C. § 2255(f)(3), the one-year limitations period runs from "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been

newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.”

Movant is not entitled to relief because the Supreme Court has not declared that Rosemond is retroactively available on collateral review. Even if it had done so, this action would be untimely because Rosemond was decided on March 5, 2014.

Moreover, absent certification from the United States Court of Appeals, this Court lacks authority to hear a successive § 2255 motion. Therefore, this action is dismissed.

Finally, movant has failed to demonstrate that jurists of reason would find it debatable whether he is entitled to relief. Thus, the Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c).

Accordingly,

IT IS HEREBY ORDERED that the motion to vacate, set aside, or correct sentence is **DENIED**, and this action is **DISMISSED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

An Order of Dismissal will be filed separately.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 12th day of October, 2016.